

CIVIL COVER SHEET

JS 44 (Rev. 4/97)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

Christine Mosquito, as Executrix of the Estate of
Quinton D. Mosquito

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)**

Mobile

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael S. McNair
2151 Government Street, Mobile, AL 36606
251-450-0111

DEFENDANTS

PATE STEVEDORE CO., INC.;
PASCAGOULA-MOSS POINT STEVEDORES, ILA
PENSION PLAN

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) ERISA**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION

DEMAND \$

UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:JURY DEMAND: ☐ YES ☒ NO**VIII. RELATED CASE(S) IF ANY**

2-26-2009

DATE

SIGNATURE OF ATTORNEY OF RECORD

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**CHRISTINE MOSQUITO, as Executrix of
the Estate of QUINTON D. MOSQUITO,**

Plaintiff,

Vs.

**PATE STEVEDORE CO., INC.;
PASCAGOULA-MOSS POINT
STEVEDORES, ILA PENSION PLAN;**

Defendant.

)
)
)
)
)
) **Case Number CV-2009-_____**
)
)
)
)

COMPLAINT

Jurisdiction

This action is brought pursuant to 29 USC Sections 1132(a)(1)(B), (a)(3)(e)(1); [ERISA Sections 502(a)(1)(B), (a)(3) and (e)(1)]. Jurisdiction is founded on 28 USC Sections 1331 and 1343(1)(2)(3)(4) and the aforementioned statutory and constitutional provisions..

This cause of action for injunctive or other equitable relief to address violations of the Employment Retirement Income Security Act, hereinafter referred to as “ERISA”, and a claim for benefits under an ERISA plan, pursuant to 29 USC Sections 1132(a)(1)(B).

Facts

1. The Plaintiff is the Estate of Quinton D. Mosquito, which is being probated in Mobile County, Alabama.
2. Upon information and belief, the Defendant, Pate Stevedore Co., Inc., is and at all times pertinent hereto, a corporation or other legal entity doing business in the State of Alabama and Mississippi.

3. Upon information and belief, the Defendant, Pascagoula-Moss Point Stevedores, ILA Pension Plan, is, and at all times pertinent hereto, a corporation or other legal entity doing business in the State of Alabama and Mississippi.

4. Quinton Mosquito received payments under the Pension Plan he had with the Defendants, which is administered under ERISA.

5. Quinton Mosquito began receiving benefits from the Defendants in approximately 1986.


6. Around November 16, 1995, Quinton Mosquito disappeared and the last payment received under the Plan was for January 1996. The Defendants have not made any payments since the January 1996 payment.

7. The Probate Court of Mobile County issued an order dated November 10, 2004, wherein Quinton Mosquito was declared dead on October 28, 2003.

8. After several requests, the Defendants have failed and/or refused to make any payments to which Quinton Mosquito is entitled to under the Plan.

9. The Plaintiff has exhausted all of her administrative remedies.

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendants, Pate Stevedore Co., Inc. and Pascagoula-Moss Point Stevedores, ILA Pension Plan, for any and all benefits to which the Plaintiff is entitled to under the Plan, plus attorney's fees, interest, costs, and such further relief to which the Plaintiff may be entitled, the premises considered.


Christine Mosquito, as Executrix of the
Estate of Quinton D. Mosquito, Plaintiff

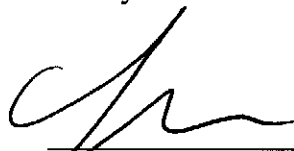
STATE OF ALABAMA)
COUNTY OF MOBILE)

I, the undersigned Notary Public in and for said State and County, hereby certify that, CHRISTINE MOSQUITO, as Executrix of the Estate of Quinton D. Mosquito, whose name is signed to the foregoing Complaint, and who is known to me, acknowledged before me on this day that being informed of the contents of said Complaint, she executed the same voluntarily on the day the same bears date.

Given under my hand and notarial seal on this the 30 day of January, 2009.

My Commission Expires: 1/11/10

Wendi Marie Pratt
Notary Public



Michael S. McNair (MCNAM5298)
Attorney for Plaintiff

M. S. McNair, Attorney at Law, P.C.
2151 Government Street
Mobile, Alabama 36606
(251) 450-0111
(251)450-0822 fax

Defendants to be served via certified mail as follows:

Pate Stevedore Co., Inc.
P.O. Box 12781
Pensacola, FL 32591

Pascagoula-Moss Point Stevedores, ILA Pension Plan
4619 Main Street, Suite A
Moss Point, MS 39563